IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 328 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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YOGESH ALIAS KALU VALJI VAGHELA

Versus

DEPUTY POLICE COMMISSIONER

Appearance:

1. Special Criminal Application No. 328 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR SS PATEL APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/09/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated November 22, 2000, Annexure B to the petition, passed by the externing authority, i.e., Deputy Commissioner of

Police, West and Traffic, Surat City, by which he has externed the petitioner for a period of two years from five districts i.e., Surat City, Surat Rural, Bharuch, Navsari and Valsad and also the order dated April 7, 2001, Annexure C to the petition, passed by the appellate authority, confirming the order passed by the externing authority, and prayed to issue a writ, order or direction quashing and setting aside both the aforesaid orders.

2. A show cause notice under section 59 of the Bombay Police Act ('the Act' for short) dated July 22, 1999, was issued to the petitioner wherein several allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him are detrimental for maintenance of public order. Besides this, three cases also were registered against him in Rander Police Station for the commission of various offences under the Indian Penal Code. Therefore, by issuing show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner gave reply to the said show cause notice on March 23, 2000. The externing authority after considering the reply and the material on the record passed the impugned order of externment dated November 22, 2000 in exercise of the powers conferred under Section 56 (a) and (b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority which was dismissed by it vide order dated April 7, 2001, Annexure C to the petition.

5. Mr. Anil Dave, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he has also raised a contention that in the show cause notice the activities alleged against the petitioner were of 1996,

1997 and 1999 and the impugned order was passed on November 22, 2000 after concluding the proceedings long back. He does not rest here. He further contended that after the written submission was submitted on March 23, 2000, the order of externment which is under challenge in this petition came to be passed on November 22, 2000 and thus there is a delay of eight months in passing the impugned order of externment which is not explained either in the order of externment or by filing affidavit in reply. The learned advocate for the petitioner, therefore, submitted that the impugned order of externment suffers from the vice of non-application of mind and hence it is required to be quashed and set aside.

6. Mr. S.S. Patel, learned APP who appears for the respondents does not dispute the factual aspects of the matter. He, therefore, urged that appropriate order may be passed in the facts and circumstances of the case.

7. I have considered the submissions advanced by the learned advocates for the parties. I have perused the averments made in the petition and also the orders passed by the externing authority and the appellate authority and other papers annexed to the petition.

8. It is true that the externing authority has served the show cause notice dated July 22, 1999 about the alleged anti social activities carried out by the petitioner which according to the externing authority are detrimental to the maintenance of public order. Pursuant to the show cause notice, proceedings were initiated, opportunity was given to the petitioner to defend his case and the proceedings were concluded before the externing authority on March 23, 2000 the day on which the petitioner submitted his written submissions. Thereafter the externing authority did not pass the order of externing for a period of eight months and the externment order came to be passed on November 22, 2000. No explanation is forthcoming from the externing authority either from the order of externment or by way of reply affidavit as to why there is delay in passing the order of externment.

9. A Division Bench of this Court in the case of Santosh Ramprasad Sharma v. Deputy Commissioner of Police, 1992 (2) GLH 457 has held that in externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from a particular

locality or a district. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

10. It is settled proposition of law that under Section 59 of the Act, action should be followed as expeditiously as possible and only a short notice must be given and immediately thereafter the witnesses are to be examined and if there is a long delay in passing the order of externment after issuance of show cause notice, the externing authority cannot reasonably come to the conclusion that the moment the externment order is passed the externee is causing or likely to cause or involve in such activities and, therefore, on this sole ground the order of externment suffers from the vice of non-application of mind and requires to be quashed and set aside by allowing the petition.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures B and C to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

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